UN

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1995/96
10 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 24 of the provisional agenda

RIGHTS OF THE CHILD

Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts

Chairman-Rapporteur: Mr. Nils Eliasson (Sweden)

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. ORGANIZATION OF THE SESSION	3 - 13	3
A. Opening and duration of the session	3	3
B. Election of the Chairman-Rapporteur	4	3
C. Participation	5 - 10	3
D. Documentation and organization of work	11 - 13	4
II. GENERAL DISCUSSION	14 - 33	4

GE.95-10888 (E)

CONTENTS (continued)

	Paragraphs	Page
III. PROPOSALS PRESENTED ON THE PRELIMINARY DRAFT OPTIONAL PROTOCOL	34	7
A. Preamble	34 - 74	7
B. Article 1	75 - 87	12
C. Article 2	88 - 126	15
D. Article 3	127 - 128	21
E. Article 4	129 - 132	21
F. Article 5	133 - 134	21
G. Article 6	135 - 136	22
H. Article 7	137 - 138	22
I. Article 8	139 - 140	22
J. Article 9	141 - 144	23
K. Article 10	145 - 146	23
L. Other proposals	147 - 194	24

Annex: Draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts.

Introduction

1. The Commission on Human Rights, by its resolution 1994/91, decided to establish an open-ended inter-sessional working group of the Commission to elaborate, as a matter of priority, a draft optional protocol to the Convention on the Rights of the Child, using as one basis for its discussions the preliminary draft optional protocol on involvement of children in armed conflicts (E/CN.4/1994/91) submitted by the Committee on the Rights of the Child.

2. The Economic and Social Council, in its resolution 1994/10, authorized an open-ended working group to meet for a period of two weeks prior to the fifty-first session of the Commission on Human Rights.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The first session of the working group was opened by the Assistant Secretary-General for Human Rights, who made a statement. During the session the Working Group held 19 meetings from 31 October to 11 November 1994 and on 9 February 1995.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 31 October 1994, the working group elected Mr. Nils Eliasson (Sweden) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Angola, Austria, Australia, Brazil, Bulgaria, Canada, Chile, China, Côte d'Ivoire, Cuba, Cyprus, Ecuador, Finland, France, Germany, India, Italy, Japan, Kenya, Mexico, Netherlands, Nigeria, Pakistan, Peru, Poland, Republic of Korea, Romania, Russian Federation, Sri Lanka, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. The following States, non-members of the Commission, were represented by observers: Algeria, Argentina, Croatia, Czech Republic, Denmark, Egypt, El Salvador, Greece, Iraq, New Zealand, Morocco, Nicaragua, Norway, Philippines, Senegal, South Africa, Slovakia, Sudan, Sweden, Thailand.

7. The following non-member States of the United Nations were also represented by observers: Holy See, Switzerland.

8. The following United Nations bodies were represented by observers: United Nations Children's Fund and the United Nations High Commissioner for Refugees.

9. The International Committee of the Red Cross was also represented by observers.

10. The following non-governmental organizations were represented by observers at the meetings: African Commission for Health and Human Rights Promoters (CAPSDH), Baha'i International Community, Defence for Children International, Friends World Committee for Consultation (Quaker), International Federation Terre des Hommes, International Fellowship of Reconciliation, International Save the Children Alliance.

D. Documentation and organization of work

11. The working group had before it the following documents:

E/CN.4/1994/WG.13/1	Provisional agenda
E/CN.4/1994/WG.13/2 and Add.1-3	Report of the Secretary-General prepared pursuant to paragraph 16 of Commission resolution 1994/91: comments on the preliminary draft optional protocol.
E/CN.4/1994/91	Note by the secretariat (containing the preliminary draft optional protocol prepared by the Committee on the Rights of the Child).

12. The working group adopted its agenda, as contained in document E/CN.4/1994/WG.13/1, at its 1st meeting, on 31 October 1994.

13. At the 16th meeting, on 9 November 1994, a statement on behalf of Ms. Graça Machel, expert appointed pursuant to General Assembly resolution 48/157 to undertake a study on the impact of armed conflicts on children, was delivered to the working group.

II. GENERAL DISCUSSION

14. At its 1st and 2nd meetings, on 31 October 1994, the working group, at the invitation of the Chairman-Rapporteur, held a general discussion on various questions relating to the task of drafting an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts.

15. It was generally felt that the practice of the use of children as soldiers should be eradicated and that, as one of the means to achieve this purpose, the minimum age for recruitment of persons into armed forces should be raised.

16. Various views were expressed with regard to the mandate of the working group and the contents of the future optional protocol.

17. Some participants insisted on the necessity to implement the principle that the best interests of the child were to be a primary consideration in all actions concerning children. They declared their willingness to adopt without delay an optional protocol in which the minimum age of recruitment should necessarily be set at 18 years and stressed that it was imperative to set such a threshold. Some delegations recalled the request which had been made by the

World Conference on Human Rights to the Committee on the Rights of the Child "to study the question of raising the minimum age of recruitment into armed forces" (A/CONF.157/24 (Part I, chap. III, sect. II), para. 50). It was stated in this connection that the preliminary draft optional protocol submitted by the Committee on the Rights of the Child constituted an excellent basis for the work and should not require prolonged discussion.

18. It was, however, argued by some other participants that while all efforts should be made to protect children to the maximum extent from involvement in armed conflicts, the raising of the age limit for recruitment was not the only way to achieve this goal. Reference was made by several delegations to their national legislation allowing, under certain conditions and in certain circumstances, the recruitment of persons below the age of 18 years into their armed forces. It was therefore felt that such national laws would inevitably be in conflict with the provisions of the protocol if it was to be drafted along the lines proposed by the Committee on the Rights of the Child. It was also pointed out that a protocol would not immediately remedy the existing situation of children in armed conflicts.

19. Other representatives stated that national legislation should not be presented as an obstacle to the elaboration of new and more advanced international standards, and that the working group should concentrate on how to draft the protocol most expeditiously. The view was also expressed that the working group should endeavour to draft an instrument which could be widely adhered to, rather than a specific one which would not attract many ratifications.

20. Some delegations expressed their concern about the interrelationship between an optional protocol and some of the already established principles and norms of international humanitarian law, and the need for the provisions of the draft optional protocol to be consistent with those principles and norms. It was also mentioned in this connection that article 38 of the Convention on the Rights of the Child, which this working group was seeking to develop, had been inspired by pertinent provisions of the 1977 Protocols Additional to the Geneva Conventions.

21. According to another view, the draft optional protocol was not in contradiction with international humanitarian law but rather could supplement the existing instruments in this field. It was also emphasized that the protocol should be seen as a human rights instrument and that obligations for States parties should be clearly spelled out.

22. Other issues raised during the general debate included the distinction between direct and indirect participation in hostilities, voluntary versus compulsory recruitment into armed forces, recruitment of children by rebel groups and other irregular armed forces, status of children enlisted or admitted into military schools and some other questions such as admissibility of reservations to the protocol which were subsequently discussed again by the working group in connection with its consideration of particular articles of the draft optional protocol.

23. Thus, with regard to the issue of the distinction between direct and indirect participation in hostilities, the view was expressed that in the

field there was often very little difference between these two forms and that the prohibition on participation should be broadly construed to prevent children from taking part in hostilities both directly or indirectly. For this reason, it was felt by some delegations that the draft protocol should not qualify the participation of children in hostilities.

24. As a large portion of children currently involved in armed conflicts are not dependent on regular armed forces, but on other groups and forces, it was generally felt that the prohibition against recruitment and participation of children in hostilities should be in relation to both governmental armed forces and other armed groups, including irregular armed forces, rebel groups, etc., and that a separate article in the optional protocol should call for such a prohibition.

25. Some delegates expressed doubts concerning the possibility of imposing obligations on non-State actors, being non-parties to the Convention and the Protocol.

26. Many speakers emphasized that while drafting a separate article on the prohibition against recruitment and participation of children in hostilities relating to forces other than those of the State, care should be taken to avoid that armed groups would be equated with States parties to the Convention on the Rights of the Child and the proposed protocol. In this respect, it was underlined that human rights instruments primarily address States.

27. Several delegations referred to the specific situation and age limits of children who were admitted as students to various military schools and similar educational institutions in their respective countries. It was stated in this connection that the general prohibition of the recruitment of children below 18 years of age should not apply to children who are enlisted in or admitted to such schools or otherwise recruited only for the purpose of education and military training.

28. The attention of the working group was drawn to different meanings which the term "recruitment" had in different languages. Alternative terms proposed for eventual use in the draft optional protocol included "conscription", "enlistment", "enrolment" as well as "admission" and "registration". It was also stressed that a consistent terminology of human rights and of humanitarian law was vital in the drafting process in order to avoid misinterpretation in the future.

29. In addition to the proposed text for an optional protocol by the Committee on the Rights of the Child, some members of the working group felt that new articles were needed to address issues such as the physical and psychological reintegration of child victims of armed conflicts; conditions of peace and security as essential prerequisites to protect children; obstacles for the protection of children in armed conflicts; the need to broaden the ability of the Committee on the Rights of the Child to seek further clarification from States Parties in case reliable information is received on the recruitment or use of children practised in the territory of a State party.

30. With regard to the proposal for a new article to be inserted after article 5, many delegations opposed the consideration of the present text on the grounds that it went beyond the mandate given by Commission on Human Rights resolution 1994/91 and modified substantive issues, and was thus not in keeping with article 50 of the Convention. Other delegations proposed that consideration of the text should be deferred to a later meeting.

31. One delegation suggested that the envisaged role of the Committee on the Rights of the Child could be made conditional on a declaration by each State party concerned, along the lines of article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Committee in this regard.

32. Some delegations welcoming any effort which could strengthen the work of the Committee on the Rights of the Child, strongly supported the proposed new article.

33. Discussion took place concerning the intention of the protocol. Some delegations expressed the view that it was to strengthen the rights of the child, while others believed that the rights of the child are already present in the Convention and that the intention of the protocol is to strengthen the protection of children and the implementation of their rights, as proposed by the Committee.

III. PROPOSALS PRESENTED ON THE PRELIMINARY DRAFT OPTIONAL PROTOCOL

34. At its 2nd meeting, on 31 October 1994, the working group began its general consideration of the preliminary draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts (E/CN.4/1994/91, annex) prepared by the Committee on the Rights of the Child, which was the only draft formally submitted to the working group. Various proposals relating to the preamble and the operative part of this document were considered by the working group.

A. Preamble

Title

35. At its 3rd meeting, on 1 November 1994, the Working Group began its consideration of the title and the preambular part of the preliminary draft optional protocol and continued to do so at its 5th meeting, on 2 November 1994 and at its 17th meeting, on 10 November 1994. The title read as follows:

"PRELIMINARY DRAFT OPTIONAL PROTOCOL ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS"

36. At the 5th meeting, on 2 November 1994, it was proposed by the Chairman-Rapporteur that the title of the draft optional protocol should include a reference to the Convention on the Rights of the Child.

37. At the 17th meeting, on 10 November 1994, the Working Group agreed with the proposal of the Chairman-Rapporteur to insert, after the words "optional protocol", the words "to the Convention on the Rights of the Child" in the title of the draft optional protocol.

First preambular paragraph

38. The first preambular paragraph read as follows:

> "Encouraged by the fact that an unprecedented number of States have to date become parties to the Convention, thereby demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,"

39. At the 5th meeting, on 2 November 1994, following the suggestion of the delegations of Nigeria, the United States of America and the Netherlands that the reference to "an unprecedented number of States" should be replaced by another wording, the representative of India proposed to replace the words "the fact that an unprecedented number of States have to date become parties to" by "the overwhelming support for".

40. The representative of China proposed using the full title of the Convention on the Rights of the Child.

41. At its 17th meeting, on 10 November 1994, the working group agreed to the proposal of India and to the proposal of the Chairman-Rapporteur to delete the word "thereby".

Second preambular paragraph

42. The second preambular paragraph read as follows:

> "Reaffirming that the rights of children require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security,"

43. At the 17th meeting, on 10 November 1994, the working group agreed to the proposal of Mexico to replace the words "all over the world" by "without distinction".

Third preambular paragraph

44. The third preambular paragraph read as follows:

> "Considering that to further implement the rights recognized in the Convention on the Rights of the Child, there is need to strengthen the protection of children involved in armed conflicts,"

45. At its 5th meeting, on 2 November 1994, the following proposals were made:

(a) The representatives of New Zealand, El Salvador and the Netherlands suggested that the word "implement" should be replaced by "strengthen", and the word "strengthen" be replaced by the word "augment";

(b) The representative of the Netherlands favoured the deletion of the word "involved";

(c) The representative of Canada, supported by El Salvador, proposed to insert the words "in situations of" before "armed conflicts";

(d) The representative of China proposed to insert the words "in hostilities" before the words "in armed conflicts";

(e) The representative of the Russian Federation proposed to replace the words "involved in" by "affected by";

(f) The representative of the Philippines proposed to replace the words "to strengthen the protection of children involved in armed conflicts" by "to protect children from involvement in armed conflicts/hostilities".

46. At its 17th meeting, on 10 November 1994, the following proposals were made:

(a) The representative of China repeated its earlier proposal (see para. 45 (d));

(b) With reference to its proposal (see para. 45 (a)), the observer for Norway proposed to replace the words "in hostilities" by the words "in hostilities and armed conflicts";

(c) The representative of Australia proposed to delete the word "involved";

(d) The observer for New Zealand proposed to replace the word "strengthen" by "increase", while the observer for Norway proposed to replace this word by "enhance";

(e) The representative of China proposed to replace the word "involved" by the words "from the involvement";

47. The Working Group then agreed to put in square brackets, as competing proposals, the words "implement" and "strengthen", and the words "strengthen" and "increase". The Group also agreed that the final part of the third preambular paragraph should read as follows: "... the protection of children from involvement in armed conflicts".

Fourth preambular paragraph

48. The fourth preambular paragraph read as follows:

> "Believing that the involvement in hostilities of persons who have not attained the age of 18 years is harmful for them physically and psychologically and affects the full implementation of the Rights of the Child including the right to life,"

49. At the 3rd meeting, on 2 November 1994, the representative of the Philippines and the observer for Norway proposed to delete the fourth preambular paragraph.

50. At the 17th meeting, on 10 November 1994, upon the proposal of the representative of Australia as well as earlier proposals, the working group agreed to delete the fourth preambular paragraph.

Fifth preambular paragraph

51. The fifth preambular paragraph read as follows:

> "Noting that article 1 of the Convention recognizes every human being below the age of 18 years to be a child, unless under the law applicable to the child, majority is attained earlier,"

52. At its 17th meeting, on 10 November 1994, the representatives of Japan, France, the Russian Federation and the observer for New Zealand proposed that the exact wording of article 1 of the Convention on the Rights of the Child should be cited if the fifth preambular paragraph was to be retained.

53. The representative of Australia proposed that the fifth preambular paragraph be deleted.

54. The representative of Cuba proposed to replace "Noting" by "Reaffirming".

55. The representative of Mexico proposed a new text for this preambular paragraph, reading as follows:

> "Reaffirming that, for the purposes of the present Protocol, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

56. Upon the proposal of the representatives of Australia and the Netherlands, the working group agreed to place the text of the fifth preambular paragraph in square brackets.

Sixth preambular paragraph

57. The sixth preambular paragraph read as follows:

> "Recognizing that article 38 of the Convention admits recruitment of persons into armed forces and their direct participation in hostilities after the attainment of the age of 15 years,"

58. At the 3rd meeting, on 2 November 1994, the representative of the Philippines proposed to delete the sixth preambular paragraph.

59. At the 5th meeting, on 2 November 1994, the observers for Norway, Sweden, Argentina and the representative of the Russian Federation proposed to delete the sixth preambular paragraph.

60. The representative of India proposed to merge the sixth and seventh preambular paragraphs.

61. At the 17th meeting, on 10 November 1994, following the proposals of the representative of Australia as well as earlier proposals, the working group agreed to delete the sixth preambular paragraph.

Seventh preambular paragraph

62. The seventh preambular paragraph read as follows:

> "Taking into account that many States Parties to the Convention have expressed their determination, including through unilateral declarations upon signature or ratification, not to recruit into their armed forces persons below the age of 18 years,"

63. At the 3rd meeting, on 2 November 1994, the representative of the Philippines proposed to delete the seventh preambular paragraph.

64. At the 5th meeting, on 2 November 1994, the deletion of the seventh preambular paragraph was proposed by the representatives of Mexico and Argentina.

65. At its 17th meeting, on 10 November 1994, the working group agreed to delete the seventh preambular paragraph.

Eighth preambular paragraph

66. The eighth preambular paragraph read as follows:

> "Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces [and their direct participation in hostilities] to 18 years, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children, while giving States Parties which find themselves in a position to do so the possibility to adhere to such a protocol,"

67. At the 17th meeting, on 10 November 1994, the representative of Japan proposed to introduce into this paragraph a formula similar to that proposed by him (para. 94 below) with regard to article 2, which would read as follows: "as combatants taking a direct part in hostilities".

68. The working group agreed to place the original text of the eighth preambular paragraph in square brackets.

New preambular paragraphs

69. At the 5th meeting, on 2 November 1994, the representative of Cuba proposed a new preambular paragraph reading as follows:

> "Convinced that military invasions, foreign occupations, the use or the threat of the use of force, colonialism, the denial of the right to development and of the right of peoples to self-determination constitute the greatest obstacles to the realization of the rights of the child, in particular for the protection of children in armed conflicts."

70. The representatives of the United Kingdom, Poland, the Russian Federation, Germany, India and New Zealand expressed opposition to this proposal.

71. The working group agreed with the proposal of the Chairman-Rapporteur to put the proposed new preambular paragraph in square brackets.

72. At the 11th meeting, on 7 November 1994, the representative of India proposed a new preambular paragraph reading as follows:

> "Recognizing with grave concern the growing trend towards recruitment, training and use of children in hostilities by armed groups."

73. At its 17th meeting, on 10 November 1994, with regard to a new preambular paragraph proposed by India the representative of Pakistan proposed to delete the words "by armed groups".

74. A clear majority of speakers expressed support for the paragraph proposed by India, bearing in mind, however, the need to continue the consideration of the paragraph in the light of the drafting of the new article placed after article 2. The representative of Pakistan explained that the trend was towards the use of children in all hostilities and not just their recruitment by armed groups.

B. Article 1

75. At its 2nd meeting, on 31 October 1994, the Working Group began its consideration of article 1 of the preliminary draft optional protocol which read as follows:

> "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities."

76. At the same meeting, the following proposals were submitted with regard to article 1:

(a) The observer for Sweden proposed to delete the words "take all feasible measures to";

(b) The representative of Japan proposed to insert the words "a direct" before the words "part in hostilities";

(c) The observer for the Friends World Committee for Consultation (Quakers) made the following suggestions:

(i) The present article 1 should become paragraph 1 of a new article 3 which, with further modifications, would read as follows:

"1. States Parties to the present Protocol shall take all feasible and appropriate measures, including legislation, to ensure that children are neither recruited into armed forces nor allowed to participate in hostilities".

(ii) A new article 1 would read as follows:

"Children who have not attained the age of 18 shall neither be recruited into armed forces nor be allowed to take part in hostilities directly or in the performance of any task or function that would otherwise qualify the child as a combatant".

77. At the 3rd meeting, on 1 November 1994, the working group continued its consideration of article 1. The following proposals were made:

(a) The representative of the United States of America proposed to insert "[17]" after the words "the age of 18". This proposal was supported by the representative of Pakistan at the 14th meeting, on 8 November;

(b) The representative of China proposed to add, at the end of article 1, the words "in armed conflicts.";

(c) The observer for the International Committee of the Red Cross proposed an amendment to a new article 1 presented by the Friends World Committee for Consultation (Quakers) at the 2nd meeting. The amendment sought to delete all words after the word "hostilities". Another amendment to this text was proposed by the representative of Nigeria who suggested that the words "with the exception of the recruitment of students into military schools" should be added at the end of the article.

78. The observer for the Friends World Committee for Consultation (Quakers) accepted the amendment proposed by the observer for the ICRC on condition that the words "in any auxiliary capacity" are added at the end of the article after the word "hostilities".

79. At the 4th and 5th meetings, on 1 and 2 November 1994, the working group continued its consideration of article 1.

80. The observer for Sweden proposed the following text for article 1:

"1. Children who have not attained the age of 18 years shall not [be allowed to] take part in hostilities.

"2. States Parties shall take all feasible measures, including legislation, to ensure that this prohibition is respected".

81. The representative of Nigeria proposed an amendment to this text which consisted of adding, at the end of paragraph 1, the following words:

> "directly or in the performance of any task that would qualify the child as a combatant. This does not include the children that are in military academies.";

82. The observer for the Friends World Committee for Consultation (Quakers) proposed a new text for article 1 reading as follows:

> "Every child has the right to be free from participation in armed forces or hostilities".

83. The representative of Mexico proposed, on behalf of some members of the Latin American Group, the following new article 1:

> "In armed conflicts and without prejudice to international humanitarian law, States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities, unless under the law applicable to the child, majority is attained earlier".

84. At the 7th meeting, on 3 November 1994, the working group continued its consideration of article 1.

85. The representative of Nigeria proposed a new article 1 reading as follows:

> "1. Every child has the right to be free from direct participation in hostilities.
>
> "2. In armed conflict and without prejudice to international humanitarian law, persons who have not attained the age of 18 years shall not take a direct part in hostilities. In this regard, State Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take a direct part in hostilities."

86. At the same meeting, the representative of Cuba proposed a new article 1 which read as follows:

> "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take a direct part in hostilities, unless under the law applicable an earlier age is established in accordance with article 38 of the Convention."

87. At the 9th meeting, on 4 November 1994, the observer for New Zealand proposed to amend article 1 by inserting the following phrase between the words "all feasible measures" and "to ensure": "taking into account the operational requirements of particular services".

C. Article 2

88. At its 2nd meeting, on 31 October 1994, the Working Group began its consideration of article 2 of the preliminary draft optional protocol, which read as follows:

> "States Parties shall refrain from recruiting any person who has not attained the age of 18 years into their armed forces."

89. At the same meeting, the representative of the United States of America proposed to replace the word "recruiting" by the words "involuntary induction of".

90. The representative of the Netherlands proposed to replace the word "recruiting" by the words "compulsory conscription".

91. The representative of the United Kingdom proposed to replace the word "recruiting" by the word "conscripting".

92. The representative of France proposed to insert the words "with the exception of the recruitment of students of military schools" at the end of the article.

93. The representative of Cuba proposed to insert, at the end of the article, the words "unless, by virtue of the applicable law, he has attained majority before".

94. The representative of Japan proposed to insert, at the end of the article, the words "as a combatant that takes direct part in hostilities."

95. The observer for the Friends World Committee for Consultation (Quakers) proposed a new article 2 reading as follows:

> "For the purposes of this Protocol,
>
> 'recruit' includes both compulsory conscription and voluntary enlistment or participation;
>
> 'armed forces' includes regular and irregular government armed forces, government paramilitary or civil defence forces, and any other militia, armed force or group, private or public, operating in or from a State Party to this Protocol; and
>
> 'hostilities' includes all situations of armed conflict, whether the conflict is international or wholly or partially internal, and whatever the level of conflict."

96. The representative of Nigeria proposed to amend this text by inserting, at the end of the first paragraph, the words ", with the exception of the recruitment of students into military schools;".

97. At the same meeting, the observer for the Quakers proposed the following new wording for article 2:

> "States Parties to the present Protocol shall take all feasible and appropriate measures, including legislation, to ensure that children are neither recruited into armed forces nor allowed to participate in hostilities."

98. At the same meeting, the representative of the United States of America proposed to insert "/[17]" after the words "the age of 18".

99. At the 5th meeting, on 2 November, the observer for Sweden proposed the following new wording for article 2:

> "Children who have not attained the age of 18 years shall not be recruited into armed forces for purposes where they could be obliged to take a direct part in hostilities."

100. At the same meeting, the representative of Mexico proposed the following new wording for article 2:

> "States Parties shall only be able to recruit persons under 18 years of age for educational purposes and for military training."

101. At the 7th meeting, on 3 November, the representative of Australia proposed the following text:

> "States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. Further, States Parties shall only be able to recruit persons between the ages of 15 and 18 years of age into their armed forces for educational purposes and for military training."

102. At the same meeting, the representative of France proposed the following text:

> "Children under the age of 18 shall not be recruited into the armed forces under circumstances in which they might be obliged to take part, without their consent, in hostilities."

103. At the same meeting, the representative of Cuba made the following proposal:

> "States Parties shall only be able to recruit persons under the age of 18 years for educational and training purposes and for military service in armed forces."

104. At the 8th meeting, on 3 November, the representative of Australia proposed a possible paragraph 2 of article 2:

> "States Parties shall ensure that every child who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18, does so with the full and informed consent of his or her parents,

legal guardians or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

105. At the 10th meeting, on 4 November, the following amendments were made with respect to this proposal:

(a) The representative of the United Kingdom proposed to insert the words ", if appropriate" after the words "legal guardians or";

(b) The representative of Mexico proposed to insert the words "or institutions" after the words "other individuals";

(c) The observer for the Philippines proposed to insert the words ", as appropriate." at the end of the paragraph.

106. At the 9th meeting, on 4 November, the observer for Sweden proposed the following text:

"States Parties shall refrain from conscripting any person who has not attained the age of 18 years into their armed forces."

107. At the 10th meeting, on 4 November, the representative of Australia proposed the following new paragraph 3 of article 2:

"States Parties shall refrain from the forced or compulsory recruitment of any person who has not attained the age of 18 years into their armed forces. This provision shall not preclude persons subject to compulsory recruitment at the age of 18 from electing, in conformity with article 2.2, to commence their military service at an earlier date."

108. The following amendments to this text were proposed:

(a) The representative of the United States proposed to replace the word "forced" by the word "involuntary";

(b) The representative of the Netherlands proposed to delete the words "forced or";

(c) The observer for Sweden proposed to replace the word "forced" by the word "mandatory";

(d) The observer for South Africa proposed to replace the word "date" by the word "age".

109. During the same meeting, the representative of Cuba proposed the following new wording for article 2:

"1. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 are not recruited into their armed forces.

"2. States Parties shall only be able to recruit persons under 18 years of age for educational, training purposes and for regular programmes of enrolment in armed forces".

110. The representative of Australia proposed the following new paragraph 1 to article 2:

"States shall refrain from recruiting any person who has not attained the age of 18 years into their armed forces, except for educational purposes, military training [or for community service]. In recruiting among those persons who have attained the age of 15 years but have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest".

111. With reference to this proposal the representative of Poland proposed to replace the word "recruiting" by the word "enrolling".

112. During the same meeting, the representative of Nigeria proposed to replace the words "except for educational purposes" by the words "except for the purposes of education".

113. The representative of the United Kingdom proposed the following new wording for paragraphs 1 and 2 of the proposal of Australia:

"1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces.

"2. States Parties may recruit persons on a voluntary basis into their armed forces who have attained the age of 16 years but have not attained the age of 18 years for educational purposes and military training".

114. The representative of Cuba proposed a new paragraph 3 for article 2:

"For the above-mentioned purposes, States Parties shall not recruit any person below the age of 16."

115. At the 11th meeting, on 7 November, the representative of Australia proposed the following new wording for paragraph 3 of article 2:

"States Parties shall refrain from recruiting any person who has not attained the age of 16 years into their armed forces".

116. At the same meeting, the representative of Australia proposed the following new article 2:

"1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces.

"2. States Parties may recruit persons on a voluntary basis into their armed forces who have attained the age of 16 years but who have not attained the age of 18 years. States Parties shall ensure that every

child who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18, does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her.

"[3. States Parties shall refrain from recruiting any person who has not attained the age of 16 years into their armed forces.]"

117. The following amendments to this proposal were suggested:

(a) The representative of the United Kingdom proposed to insert the words "inter alia" after the words "States Parties may";

(b) The representative of Japan proposed to replace the figure "16" by the figure "15";

(c) The representative of China proposed to delete the words "for educational purposes and for military training";

(d) The representative of Poland proposed to delete paragraph 2 of article 2.

118. During the same meeting the representative of Poland proposed the following wording:

"Circumstances described in article 2 (2) may not be interpreted as a possible derogation from article 1."

119. The representative of Mexico proposed to merge the proposed paragraphs 1 and 3 as follows:

"States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces and shall refrain from recruiting any person who has not attained the age of 16 years into their armed forces."

120. The observer for the Philippines proposed to amend this proposal by inserting the words "even on a voluntary basis" after the word "recruiting".

121. The representative of the Russian Federation proposed the following wording for paragraph 2 of article 2:

"States Parties may, inter alia, recruit persons on a voluntary basis who have not attained the age of 18 years for educational purposes and for military training."

122. At the 12th meeting, on 7 November, the representative of Australia submitted the following new article 2:

"1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their

armed forces. Further, States Parties shall refrain from recruiting, even on a voluntary basis, any person who has not attained the age of 16 years into their armed forces.

"2. States Parties shall ensure that every child who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18 does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her.

"[3. States Parties may only recruit persons who have not attained the age of 18 years into their armed forces for educational purposes and for military training.]"

123. The following amendments to paragraph 3 of this proposal were suggested:

(a) The representative of Mexico proposed to replace the word "may" by the word "shall";

(b) The representatives of Canada and France proposed to place the word "only" in brackets or to replace it by the words "inter alia";

(c) The representatives of Germany and the United States proposed to amend the proposal by inserting the words "inter alia" after the words "armed forces for";

(d) The representatives of Nigeria and the United States proposed to delete the brackets around paragraph 3 of article 2.

124. During the same meeting the representative of Nigeria proposed the following new paragraph 3 of article 2:

"States Parties shall ensure that persons who are above 15 years of age, but who have not attained the age of 18 years may be recruited into the armed forces purely for educational purposes and for military training, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care."

125. During the same meeting the representative of China proposed the following new paragraph 3 of article 2:

"Persons who have not attained the age of 18 years may receive military training, as appropriate, in accordance with the laws of their respective countries."

126. At the 18th meeting, on 11 November 1994, the representative of Japan proposed to put in square brackets the words "16 years" in paragraph 1 of article 2 as contained in the annex.

D. Article 3

127. At its 2nd meeting, on 31 October 1994, the Working Group began its consideration of article 3 of the preliminary draft optional protocol, which read as follows:

> "Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child."

128. During the session of the working group no formal amendments were submitted to this article.

E. Article 4

129. At its 2nd meeting, on 31 October 1994, the Working Group began its consideration of article 4 of the preliminary draft optional protocol, which read as follows: "No reservation is admissible to the present Protocol."

130. At the 8th meeting, on 3 November, the representative of France, supported by the representative of Mexico, proposed to follow the wording of article 51 (2) of the Convention on the Rights of the Child.

131. At the 13th meeting, on 8 November, the representative of Canada proposed to substitute the words "to the" by the words "to articles ... and ... of".

132. At the same meeting, the representative of Cuba proposed the following new wording for article 4:

> "No reservation incompatible with the object and purpose of the present Protocol shall be permitted."

F. Article 5

133. At the 2nd meeting, on 31 October, the working group took up consideration of article 5 of the preliminary draft optional protocol, which read as follows:

> "The States Parties to the present Protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol."

134. During the session of the working group, no formal amendments to this article were submitted.

G. Article 6

135. At the 2nd meeting, on 31 October 1994, the working group took up consideration of article 6 of the preliminary draft optional protocol, which read as follows:

> "The provisions of the present Protocol shall apply to the States Parties instead of article 38, paragraphs 2 and 3, of the Convention."

136. During the session of the working group, no formal amendments to this article were submitted.

H. Article 7

137. At the 2nd meeting, on 31 October 1994, the working group took up consideration of article 7 of the preliminary draft optional protocol, which read as follows:

> "1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.
>
> "2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
>
> "3. The Secretary-General of the United Nations in his capacity as the depositary of the Convention and the Protocol shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of ratification or accession to the Protocol."

138. During the session of the working group, no formal amendments to this article were submitted.

I. Article 8

139. At the 2nd meeting, on 31 October 1994, the working group took up consideration of article 8 of the preliminary draft optional protocol which read as follows:

> "1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
>
> "2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession."

140. At the same meeting the representative of the United States proposed to replace, in paragraph 1, the word "tenth" by the word "twenty-fifth".

J. Article 9

141. At the 2nd meeting, on 31 October 1994, the working group took up consideration of article 9 of the preliminary draft optional protocol, which read as follows:

> "Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations."

142. At the same meeting, the observer for the ICRC proposed to insert, at the end of the paragraph, the following text: "If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in article 1, the denunciation shall not take effect before the end of the armed conflict."

143. At the 13th meeting, on 8 November 1994, the representative of Australia proposed to substitute the text as proposed by the ICRC by the following text and to add a new paragraph 2 to article 9:

> "If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
>
> "2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective."

144. At the 16th meeting, on 9 November 1994, the representative of Finland proposed to insert the words "on the Rights of the Child" after the word "Committee" with respect to the text as proposed by the representative of Australia.

K. Article 10

145. At the 2nd meeting, on 31 October 1994, the working group took up consideration of article 10 of the preliminary draft optional protocol which read as follows:

> "1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations together with the Convention on the Rights of the Child.

"2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States Parties to the Convention and all States which have signed the Convention."

146. During the session of the working group, no formal amendments to this article were submitted.

L. Other proposals

New article

147. At the 2nd meeting, on 31 October 1994, the representative of Cuba proposed the following new article:

"States parties shall take all necessary measures for the physical and psychological rehabilitation and social reintegration of any child who is a victim of armed conflict, especially measures designed to guarantee medical care and adequate nutrition."

148. At the 11th meeting, on 7 November 1994, the following amendments were proposed with reference to the proposed new article:

(a) The representative of Australia proposed to include the words "to promote" after the words "measures";

(b) The observer for Sweden proposed to include the words "or is involved in" after the words "child who is a victim of";

(c) The observer for El Salvador proposed to put a full stop after the words "armed conflict". She also proposed to draft a new paragraph on the significance of international cooperation.

149. The inclusion of this new article was opposed by the representative of Canada.

150. At the 16th meeting, on 9 November 1994, the representative of Nigeria proposed to insert the words "inter alia" before the words "medical care and adequate nutrition".

151. At the same meeting, the representative of Cuba proposed the following paragraph 2 to this new article:

"2. For the purposes contained in this article, international cooperation should be strengthened."

New article

152. At the 3rd meeting, on 1 November 1994, the representative of Cuba proposed the following new article:

"Conditions of peace and security based on unconditional respect of the purposes and principles contained in the Charter of the United Nations are an indispensable prerequisite for the protection of the child."

153. At the 16th meeting, on 9 November 1994, the representatives of Australia, India and Poland and the observer for Sweden proposed that the idea contained in this paragraph be reflected in the preambular part.

154. At the same meeting, the representative of Mexico proposed to insert the words "States Parties shall promote" before the words "Conditions of peace".

New article

155. At the 8th meeting, on 3 November 1994, the representative of Australia proposed the following new article 3 to be placed after article 2 as contained in the preliminary draft optional protocol:

> "[The provisions of articles 1 and 2 of this Protocol shall apply equally to dissident armed forces or other organized armed groups [which, under responsible command, exercise such control over a territory as to enable them to carry out sustained and concerted military actions].]"

156. At the 11th meeting, on 7 November 1994, the representative of Australia proposed the following new version of this article:

> "[In the case of an armed conflict not of an international character involving organized armed groups [under responsible command], this Protocol shall apply equally to all parties to such a conflict. The application of this Protocol to such a conflict shall not affect the legal status of the parties to the conflict or the territories in question.]"

157. At the same meeting, the representative of Nigeria proposed the following text:

> "1. In the case of irregular armed forces and without prejudice to articles 1 and 2 above, children who have not attained the age of 18 years shall neither be recruited into irregular (or dissident) armed forces or groups nor be allowed to take part in hostilities.
>
> "2. States offering safe haven to dissident armed groups shall ensure the strict observance of paragraph 1 of this Article.
>
> "3. States Parties shall apply effective legal sanctions to persons committing or ordering to be committed a breach of paragraph 1 of this article."

158. The representative of India proposed to replace paragraph 2 proposed by Nigeria as follows:

> "2. States Parties shall take all necessary/feasible measures to prevent the use of their territory to encourage, instigate, organize or engage in the perpetration of such activities/for such activities."

159. At the 12th meeting, on 7 November 1994, the representative of Nigeria proposed the following revised text:

> "1. In the case of armed groups, children who have not attained the age of 18 years shall neither be recruited nor be allowed to take part in hostilities.
>
> "2. State Parties shall take all feasible measures to prevent the use of their territories to encourage, instigate, organize or engage in the perpetration of such activities.
>
> "3. States Parties shall apply effective legal sanctions to persons committing or ordering to be committed a breach of paragraph 1 of this article."

160. The representative of Nigeria revised further paragraph 2 of his revised proposal by adding, at the end of the paragraph, the words "by armed groups".

161. At the 14th meeting, on 8 November 1994, the observer for Colombia proposed to amend paragraph 2 of the article proposed by Nigeria by replacing the words "their territories to encourage, instigate, organize or engage in the perpetration of such activities" with the words "children in activities carried out by armed groups".

162. At the same meeting, the observer for Colombia proposed to further amend the paragraph by inserting the words "commit themselves to" between the word "shall" and the word "take".

163. At the 12th meeting, on 7 November 1994, the representative of Mexico proposed the following text for paragraph 1 of a new article:

> "States Parties shall apply the provisions contained in articles 1 and 2 of the present Protocol to all parties in armed conflicts regarding the involvement of children, according to applicable international humanitarian law."

164. At the same meeting, the observer for the ICRC proposed the following text:

> "The duties deriving from articles 1 and 2 must be respected by armed forces, armed groups and armed units even if they do not depend from a High Contracting Party.
>
> "Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State."

165. The representative of Australia proposed to amend paragraph 1 of the article proposed by the ICRC by replacing the words "depend from a High Contracting Party" with the words "belong to a State Party".

166. The representative of the Netherlands proposed to further amend paragraph 1 of the article amended by Australia by adding, at the beginning of the paragraph, the words "States Parties shall take all legislative and other measures to ensure that".

167. At the same meeting, the observer for the Philippines proposed the following text as paragraph 1 of the article:

> "1. Armed dissident groups shall be responsible to the Committee on the Rights of the Child in their activities which are violative of the provisions of this Protocol."

168. At the 14th meeting, on 8 November 1994, the representative of Australia proposed that the second paragraph proposed by the ICRC (see para. 164 above) be incorporated into the article proposed by the representative of Nigeria (see para. 157 above) as a new paragraph 2.

169. At the same meeting, the representative of Poland proposed the following text for the article:

> "The States Parties shall ensure to the extent possible, including through legal measures, that the provisions of articles 1 and 2 of the present Protocol are respected by other - non-governmental - armed groups operating within their territories. Non-governmental armed groups, parties to the armed conflicts or hostilities shall be responsible for the full observance of the prohibition indicated/contained in article 1; the provisions of this article shall not affect the legal status of the non-governmental parties to the conflict or hostilities."

170. At the same meeting, the representative of Mexico proposed the following text for paragraph 1 of the article:

> "1. All parties in armed conflicts should respect the provisions contained in articles 1 and 2 of the present Protocol regarding the involvement of children therein in accordance with applicable international humanitarian law."

171. At the same meeting, the observer for the Philippines, supported by the observer for El Salvador, suggested to put a full stop after the words "involvement of children therein".

172. At the same meeting, the observer for Norway proposed to amend paragraph 1 of the article proposed anew by Mexico by either deleting the words after the words "the present Protocol" or deleting the words "articles 1 and 2 of" and the words after the words "the present Protocol".

173. At the same meeting, the representative of India proposed the following text for paragraph 1 of the article:

> "1. All parties to any armed conflicts shall neither recruit, train nor allow the use of children who have not attained the age of 18 years to take part in hostilities."

174. At the same meeting, the representative of China proposed the following text for paragraph 1 of the article:

> "1. Parties to all armed conflicts other than States shall respect and observe the rule that children who have not attained the age of 18 years should not be recruited nor allowed to take part in hostilities."

175. At its 15th meeting, on 9 November 1994, the observer for Sweden proposed the following text for article 3:

> "1. With due respect to the provisions contained in articles 1 and 2, children who have not attained the age of 18 years shall neither be used in hostilities, nor recruited by any party to an armed conflict other than a State."
>
> "2. To this end, States Parties shall undertake effective measures and apply effective legal sanctions."

176. At the same meeting, the representative of Australia proposed to amend paragraph 2 of the proposal by Sweden, by replacing the word "effective" with the words "all feasible".

177. The observer for Norway proposed to delete paragraph 2 of the proposal by Sweden. She also proposed to amend paragraph 1 by replacing "an armed conflict" by "any armed conflict".

178. The observer for the Friends World Committee for Consultation proposed to add at the end of paragraph 2 of the proposal by Sweden the words "to prevent the use of their territories for such purposes".

179. The representative of India proposed to further amend the amendment proposed by Australia in paragraph 2 of the proposal by Sweden, by adding, after the words "all feasible measures", the words "including effective legislative measures and effective legal sanctions to prevent the use of their territories for this purpose".

180. The representative of the Netherlands proposed to replace paragraph 2 by the following text:

> "States Parties shall take all feasible measures to ensure the application of this article".

181. The representatives of Canada and the Netherlands proposed to replace, in paragraph 1, the word "children" by the word "persons".

182. The representative of the Netherlands proposed to delete, in paragraph 1, the words "With due respect to the provisions contained in articles 1 and 2".

183. The observer for Egypt proposed to delete from paragraph 1 the words "other than a State".

184. The representative of the United Kingdom proposed to insert, in paragraph 1, after the words "armed conflict" the words "occurring in the territory (territories) of a State Party (States Parties)."

185. The representative of Nigeria proposed, in paragraph 1, to put in square brackets the words "With due respect to the provisions contained in articles 1 and 2" and the words "other than a State". In addition, he proposed to put in square brackets the entire proposal by Sweden as amended.

186. The representative of the United States proposed to replace the words "With due respect to the provisions contained in articles 1 and 2" by the words "Except under conditions specified in articles 1 and 2".

187. At the same meeting, the representative of France proposed the following text as article 3:

> "States Parties shall take all appropriate measures to ensure that the provisions of the present Protocol are also given effect in respect of all children, including those involved in armed conflicts or recruited by non-governmental parties to armed conflicts taking place on their territories."

188. The observer for Sweden modified her earlier proposal, in order to take into account most of the comments made, as follows:

> "1. [Children] [Persons] who have not attained the age of 18 years shall [should] neither be used in hostilities, nor recruited by any party to any armed conflict [other than a State].
>
> "2. States Parties shall take all feasible measures to ensure the application of this article."

New article

189. At the 8th meeting, on 3 November 1994, the representative of Poland proposed the following new article:

> "1. If the Committee receives reliable information which appears to it to contain well-founded indications that recruitment of children, contrary to the provisions of the present Protocol, is being practised in the territory of a State Party, the Committee may request the observations of the State Party with regard to the information concerned.
>
> "2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may:
>
> (a) Seek further clarification, information or comments from any source, including where applicable the source(s) of the original information;
>
> (b) Hold hearings in order to clarify the situation.

"3. The Committee may initiate a confidential inquiry, which may include a visit of its members (2-3) to the territory of the State Party concerned:

(a) Such a visit could take place only with the consent/after the invitation of the State Party concerned;

(b) If an inquiry is made in accordance with the present paragraph the Committee shall cooperate with the State Party concerned.

"4. After examining the findings of its inquiry, made in accordance with paragraph 2 and 3 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations which seem appropriate in view of the situation.

"5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 3, the Committee may decide to include a summary account of the results of the proceedings in its annual report."

190. At the 12th meeting, on 7 November 1994, the representative of Australia suggested that the text proposed by Poland could become a part of article 5 of the draft optional protocol as submitted by the Committee on the Rights of the Child.

191. At the 16th meeting, on 9 November 1994, the observer for Sweden suggested that this new article should be a separate one rather than combined with article 5.

192. The observer for Sweden also made the following proposals:

(a) In paragraph 1, to insert, after the word "recruitment", the words "or use of children in hostilities";

(b) In paragraph 3 (a), to replace the words "invitation by" by the words "consultation with".

193. At the same meeting, the representative of Mexico, supported by the representative of China, proposed that paragraphs 1 and 2 of the text as proposed by Poland be substituted by the wording of article 44 of the Convention on the Rights of the Child.

194. Because of lack of time, the working group was not in a position to complete its debate on this new paragraph and decided that the proposed text should be bracketed in the annex.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and call for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Considering that to further [implement] [strengthen] the rights recognized in the Convention on the Rights of the Child, there is a need [to strengthen] [to increase] the protection of children from involvement in armed conflicts,

[Noting that article 1 of the Convention recognizes every human being below the age of 18 years to be a child, unless under the law applicable to the child, majority is attained earlier,]

[Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces [and their direct participation in hostilities] to 18 years, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children, while giving States Parties which find themselves in a position to do so the possibility to adhere to such a protocol],

[Convinced that military invasions, foreign occupations, the use or the threat of the use of force, colonialism, the denial to the right to development and of the rights of peoples to self-determination constitute the greatest obstacles to the realization of the rights of the child, in particular for the protection of children in armed conflicts],

Recognizing with grave concern the growing trend towards recruitment, training and use of children in hostilities by armed groups,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that persons who have not attained the age of [18] [17] years do not take [a direct] part in hostilities [in armed conflicts].

OR

[In armed conflicts and without prejudice to international humanitarian law, States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities, unless under the law applicable to the child, majority is attained earlier.]

OR

[States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take a direct part in hostilities, unless under the law applicable an earlier age is established in accordance with article 38 of the Convention.]

Article 2

1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces. Further, States Parties shall refrain from recruiting, even on a voluntary basis, any person who has not attained the age of 16 years into their armed forces.

2. States Parties shall ensure that every child who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18 years does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her.

[3. States Parties may [shall] only recruit persons who have not attained the age of 18 years into their armed forces for educational purposes and for military training.]

OR

[States Parties shall ensure that persons who are above 15 years of age, but who have not attained the age of 18 years may be recruited into the armed forces purely for educational purposes and for military training, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.]

OR

[States Parties shall only be able to recruit persons under the age of 18 years for educational and training purposes and for military service in armed forces.]

OR

[1. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 are not recruited into their armed forces.

2. States Parties shall only be able to recruit persons under 18 years of age for educational, training purposes and for regular programmes of enrolment in armed forces.]

New Article

[1. In the case of armed groups, children who have not attained the age of 18 years shall neither be recruited nor be allowed to take part in hostilities.

2. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

3. States Parties shall take all feasible measures to prevent the use of their territories to encourage, instigate, organize or engage in the perpetration of such activities.

4. States Parties shall apply legal sanctions to persons committing or ordering to be committed a breach of paragraph 1 of this article.]

OR

[All parties in armed conflicts should respect the provisions contained in articles 1 and 2 of the present protocol regarding the involvement of children therein in accordance with applicable international humanitarian law.]

OR

[1. [Children] [Persons] who have not attained the age of 18 years [shall] [should] neither be used in hostilities nor recruited by any party to any armed conflict [other than a State].

2. States Parties shall take all feasible measures to ensure the application of this article.]

OR

[The States Parties shall ensure to the extent possible, including throughout legal measures, that the provisions of articles 1 and 2 of the present Protocol are respected by other - non-governmental - armed groups operating within their territories. Non-governmental armed groups, parties to the armed conflicts or hostilities shall be responsible for the full observance of the prohibition indicated/contained in the article 1; the provisions of this article shall not affect the legal status of the non-governmental parties to the conflict or hostilities.]

Article 3

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child.

New Article

[1. States Parties shall take all necessary measures for the physical and psychological rehabilitation and social reintegration of any child who is a victim of armed conflict, especially measures designed to guarantee, inter alia, medical care and adequate nutrition.

2. For the purposes contained in this article, international cooperation should be strengthened.]

New Article

[Conditions of peace and security based on unconditional respect of the purposes and principles contained in the Charter of the United Nations are an indispensable prerequisite for the protection of the child.]

Article 4

[No reservation is admissible to the present Protocol.]

OR

[No reservation is admissible to articles ... and ... of the present Protocol.]

OR

[A reservation incompatible with the object and the purpose of the present Protocol shall not be permitted.]

Article 5

The States Parties to the present Protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol.

New Article

[1. If the Committee receives reliable information which appears to it to contain well-founded indications that recruitment or use of children in hostilities, contrary to the provisions of the present Protocol, is being practised in the territory of a State Party, the Committee may request the observations of the State Party with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may:

(a) seek further clarification, information or comments from any source, including where applicable the source(s) of the original information;

(b) hold hearings in order to clarify the situation.

3. The Committee may initiate a confidential inquiry, which may include a visit of its members (2-3) to the territory of the State Party concerned:

(a) such a visit could take place only with the consent/after the consultation with the State Party concerned;

(b) if an inquiry is made in accordance with the present paragraph the Committee shall cooperate with the State Party concerned.

4. After examining the findings of its inquiry, made in accordance with paragraph 2 and 3 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 3, the Committee may decide to include a summary account of the results of the proceedings in its annual report.]

Article 6

The provisions of the present Protocol shall apply to the States Parties instead of article 38, paragraphs 2 and 3, of the Convention.

Article 7

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations in his capacity as the depositary of the Convention and the Protocol shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of ratification or accession to the Protocol.

Article 8

1. The present Protocol shall enter into force three months after the deposit of the [tenth] [twenty-fifth] instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 9

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. If, however on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall a such denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 10

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations together with the Convention on the Rights of the Child.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States Parties to the Convention and all States which have signed the Convention.